

EXHIBIT “O”

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1 UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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3 HECTOR RIVAS,

4 Petitioner-Appellant,

5 v. 13-2974-pr

6 BRIAN FISCHER, Superintendent,
Sing Sing Correctional Facility,

7

8 Respondent-Appellee, SHOW-CAUSE HEARING

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10 New York, N.Y.
11 April 6, 2016
12 3:05 p.m.

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Before:

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HON. JOSÉ A. CABRANES, Presiding,
HON. ROSEMARY S. POOLER,
HON. ROBERT D. SACK,

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Circuit Judges

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APPEARANCES

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19 LANGONE & ASSOCIATES
Attorneys for Petitioner-Appellant
20 BY: RICHARD M. LANGONE

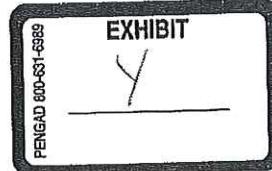
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NEW YORK STATE ATTORNEY GENERAL
Attorneys for Respondent-Appellee
22 BY: PRISCILLA I. STEWARD, AAG

23

ALSO PRESENT: SIDNEY L. MANES, ESQ.
EDWARD W. KLEIN, ESQ.
CASEY JOHNSON, ESQ.
KIMBERLY M. ZIMMER, ESQ.
ROBERT E. MORAN, ADA, Onondaga County

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1 convicted, Mitchell was let off the hook. He was allowed to
2 plead out and avoid the --

3 JUDGE POOLER: He left his job.

4 MR. LANGONE: And he left his job.

5 JUDGE POOLER: So was it going on contemporaneously?

6 MR. LANGONE: Contemporaneously.

7 There was an investigation with the DEC.

8 JUDGE POOLER: This is a factual issue.

9 MS. STEWARD: He was not being investigated by the
10 DA's office. That investigation with the DA's office did not
11 begin until four months after the trial was over.

12 JUDGE CABRANES: Let's just state the obvious: In our
13 opinion we set forth with as much care as possible what we
14 thought to be the facts. And I'm not aware -- maybe my
15 colleagues are aware, I'm not aware of any effort by anyone in
16 the state to correct any misapprehension by us. I recall no
17 such -- it may be that Ms. Steward had a different view of the
18 facts, but whatever that view may be was never conveyed to us
19 in the aftermath of the decision.

20 JUDGE POOLER: And before the DA started
21 investigating -- I know this because I live in Onondaga
22 County -- there were stories in the newspaper about his
23 integrity as a coroner. And that was going on for a while
24 before the DA began his investigation. He was under attack by
25 his former employees in the office.

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1 MS. STEWARD: That's right. That was, I believe, in
2 1992/1993. But they were not related to his -- the way he did
3 his job, and they weren't related to the way he did his job in
4 this case.

5 JUDGE POOLER: Allegedly.

6 MR. MORAN: If I may, Judge.

7 MR. MANES: If you'll forgive me, your Honor, she
8 indicates that the DA wasn't investigating, that may be true.
9 The Department of Environmental Conservation has investigated
10 Dr. Mitchell for 144 misdemeanors: For disposing of body
11 parts, for pouring material blood down the sink. So the people
12 who would have prosecuted Dr. Mitchell was not the DEC, it
13 would have been the district attorney.

14 JUDGE POOLER: He knew about the DEC to the best of
15 our knowledge?

16 MS. STEWARD: We have no evidence of that.

17 JUDGE POOLER: There's no evidence that he knew the
18 DEC was investigating?

19 MR. LANGONE: He said to the press, He was my friend
20 for 20 years and he's resigning and he's leaving. That's
21 exactly why he wasn't prosecuted, because he agreed to resign.

22 MS. STEWARD: That's not evidence that he knew about
23 the DEC investigation.

24 JUDGE CABRANES: Hold on.

25 We understand that there are differences of

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1 perspective here, but given this colloquy, Mr. Moran, do you
2 have anything to add?

3 MR. MORAN: I'm not calling Dr. Mitchell; I'm calling
4 Dr. Stoppacher. Stoppacher reviewed the --

5 JUDGE POOLER: But it's based on Dr. Mitchell's notes.

6 MR. MORAN: Yes. It's not that unusual.

7 JUDGE CABRANES: His testimony will consist of an
8 evaluation of the notes 20-plus years ago?

9 MR. MORAN: Yes. And the temperature that was at the
10 house, and the condition that the body was in, and then he'll
11 estimate the time of death.

12 JUDGE POOLER: Will we also consider Dr. Wecht's
13 testimony?

14 MR. MORAN: I haven't. I plan on calling
15 Dr. Stoppacher. Dr. Stoppacher has looked at --

16 JUDGE POOLER: I understand. But Dr. Wecht testified
17 at a hearing later and he contradicted Dr. Mitchell. I'm
18 wondering if the medical examiner would be able to respond to
19 that testimony as well.

20 MR. MORAN: I'm sure that he will. I look forward to
21 crossing Dr. Wecht.

22 JUDGE CABRANES: Mr. Langone, you had something to say
23 on this?

24 MR. LANGONE: It just slipped my mind, Judge. It will
25 come back to me.

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